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S. C. PUBLIC SERVICE COMMISSION  
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BEFORE

THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

Docket No. 1999-377-C

S. C. PUBLIC SERVICE COMMISSION  
RECEIVED  
DEC 28 1999  
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UTILITIES DEPARTMENT

United Telephone Company of the Carolinas,  
Complainant  
v.  
BellSouth Telecommunications, Inc.,  
Respondent

**MOTION TO STRIKE**

Pursuant to Rule 103-840 of the Rules of Practice and Procedure of the Public Service Commission of South Carolina ("Commission") and other applicable law, United Telephone Company of the Carolinas ("United") hereby moves to strike certain portions of, and exhibits to, the Answer of BellSouth Telecommunications, Inc. ("BellSouth"), in the above matter. This motion is made on the grounds that the Answer and exhibits contain redundant, immaterial, and impertinent matter concerning the South Carolina Telephone Coalition ("Coalition") and certain of its members. Neither the Coalition nor any of its members are parties to this proceeding, they did not participate in the development of the agreement upon which United's claim in this proceeding is based, and they were not parties to that agreement. In support of this motion, United would respectfully show as follows:

1. On September 2, 1999, United filed its Complaint and Petition for Declaratory Order in the above matter. In this pleading, United seeks an order declaring that it is entitled to

compensation, and directing BellSouth to pay such compensation, for traffic sensitive access charges and Carrier Common Line charges for all one-way flat-rated Area Calling Plan (“ACP”) traffic terminated on United’s network on and after October 1, 1996.<sup>1</sup> United alleges such compensation is due under Section 13 of the South Carolina Depooling Guidelines (“Depooling Guidelines”), which implemented Paragraph 2 of the South Carolina IntraLATA Depooling Plan (“Depooling Plan”). *See* United’s Complaint at 7-11.<sup>2</sup> The Depooling Guidelines were entered into by BellSouth, United, and GTE South, Inc. (“GTE”), in June 1993. *See* Attachment A to United’s Complaint.

2. On November 2, 1999, United received the Answer of BellSouth to Complaint and Petition for Declaratory Order, which was filed under cover dated November 1, 1999. The Answer contains a section, denominated “Background,” which includes a lengthy discussion of BellSouth’s one-sided view of ACP and related matters as they pertain to the Coalition and certain member companies of the Coalition. *See* BellSouth’s Answer at 3-7. Further, BellSouth’s Answer denies that

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<sup>1</sup> Under Section 13 of the Depooling Guidelines, an ACP is a plan “wherein measured intercity calling is established under a company’s local tariffs ....” *See* Attachment A to United’s Complaint, Page 3 of 9. United alleges that Section 13 eliminates a usage settlement between United and BellSouth only for flat-rated ACP traffic offered on a two-way basis (over interexchange routes providing ACP calling in both directions); the usage settlement applies, however, for flat-rated ACP offered on a one-way basis (where routes provide ACP calling in one direction and intraLATA toll calling in the other direction). *See* United’s Complaint at 9-11.

<sup>2</sup> Paragraph 2 of the Depooling Plan provided that BellSouth, GTE, and United “will act as toll providers and as such will establish toll rates and be responsible for compensating one another for all intraLATA traffic terminated in their respective areas.” *See* Attachment C to United’s Complaint, Exhibit A, Page 1 of 9. The preamble to the Depooling Guidelines states that “[t]he objective of this agreement is to set forth the guidelines under which the initial toll providers agree to compensate one another for interexchanged intraLATA traffic in a post Division of Revenue (DR) pool environment.” *See* Exhibit A to United’s Complaint, Page 1 of 9.

any compensation for terminating ACP traffic is due United.<sup>3</sup> BellSouth contends its interpretation of the contract documents is supported by affidavits obtained from representatives of Coalition companies which, BellSouth asserts, state that any contrary arrangement would have put these companies at a serious disadvantage. *See* BellSouth's Answer at 6. These affidavits, which are attached to the Answer, discuss the Depooling Plan and a document known as the "Area Calling Plan Principles" from the Coalition companies' perspective, and attempt to give the Coalition's understanding of these documents. Neither affidavit purports to address the Depooling Guidelines or BellSouth's obligation to pay United ACP compensation thereunder. *See* Exhibits 4 and 5 to BellSouth's Answer.<sup>4</sup>

3. United moves to strike from BellSouth's Answer any allegations or discussion concerning compensation for ACP traffic as it relates to the Coalition or any Coalition companies. The Coalition was not made a party to this proceeding by either United or BellSouth, nor has the Coalition sought to intervene as a party of record. Moreover, United does not contend that compensation for ACP traffic is due from any Coalition company. Rather, United seeks such compensation only from BellSouth which, except for GTE, was the only other entity that was a party to the Depooling Guidelines.<sup>5</sup> The references to the Coalition and Coalition companies in BellSouth's

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<sup>3</sup> BellSouth maintains that the usage settlement was eliminated when both companies instituted flat-rated ACPs, regardless of whether a particular route offers a two-way flat-rated calling option between locations. *See* BellSouth's Answer at 8.

<sup>4</sup> The Affidavit of H. Keith Oliver does indicate at page 8 that the Depooling Guidelines were not signed by the Coalition companies. It does not exhibit any knowledge about the negotiation or execution of this agreement, however. The Affidavit of James C. Meade nowhere mentions the Depooling Guidelines.

<sup>5</sup> GTE has filed a similar complaint against BellSouth and the matter has been assigned Docket No. 1999-413-C.

Answer constitute redundant, immaterial, and impertinent matter which should be stricken. *See* Rule 12(f), SCRCF (court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter); *Totaro v. Turner*, 273 S.C. 134, 254 S.E.2d 800 (1979)(court properly struck irrelevant matter from complaint); *J.M.S., Inc. v. Theo*, 241 S.C. 394, 128 S.E.2d 697 (1962)(court properly struck irrelevant and redundant allegations from answer).

4. An allegation in a defense is irrelevant when it has no substantial relationship to the controversy between the parties to the action. *J.M.S., Inc. v. Theo, supra*. As stated above, this controversy is between United and BellSouth over whether BellSouth is required to pay ACP compensation under an agreement entered into by United and BellSouth. United has not alleged that such compensation is due from any Coalition company and no Coalition company has been made a party to this proceeding. In addition, neither the Coalition nor any of its members were parties to, or participated in the development of, the Depooling Guidelines, upon which United's claim against BellSouth is based. Accordingly, allegations in BellSouth's Answer concerning any Coalition company's understanding of its obligations under agreements other than the Depooling Guidelines have no substantial relationship to this controversy. These allegations should be stricken from the Answer.

5. Based upon the foregoing, United moves to strike the following portions of BellSouth's Answer and attachments:

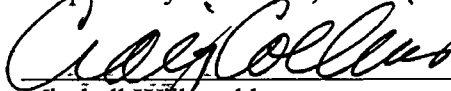
- (a) page 4, third full paragraph, through page 7, first full paragraph;
- (b) page 8, footnote 10;
- (c) page 8, second full paragraph, second sentence;
- (d) Exhibit 4 (Affidavit of H. Keith Oliver); and

(e) Exhibit 5 (Affidavit of James C. Meade).

WHEREFORE, having fully set forth its motion, United requests that the Commission issue an order striking the portions of BellSouth's Answer and attachments as specified herein, and granting such other relief as is just and proper.

December 22, 1999

Respectfully submitted,



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the Carolinas

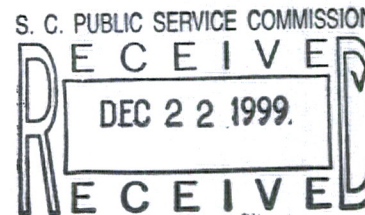
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BEFORE

THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 1999-377-C - ORDER NO. \_\_\_\_\_



IN RE: United Telephone Company of the	)	
Carolinas,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
BellSouth Telecommunications, Inc.,	)	
	)	
Respondent.	)	
	)	

ORDER GRANTING  
MOTION TO STRIKE



This matter comes before the Public Service Commission of South Carolina (the Commission) on United Telephone Company of the Carolina's (United's) Motion to Strike certain portions of, and Exhibits to, the Answer of BellSouth Telecommunications, Inc. (BellSouth). United contends that the Answer and Exhibits contain redundant, immaterial, and impertinent matter concerning the South Carolina Telephone Coalition (Coalition) and certain of its members. United notes that neither the Coalition nor any of its members are parties to this proceeding, that they did not participate in the development of the agreement upon which United's claim in this proceeding is based, and that they were not parties to that agreement.

United's Complaint and Petition for Declaratory Order in the above matter seeks an order declaring that it is entitled to compensation, and directing BellSouth to pay such compensation, for traffic sensitive access charges and Carrier Common Line charges for all one-way flat-rated Area Calling Plan (ACP) traffic terminated on United's network on and after October 1, 1996. United

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DOCKET NO. 1999-377-C - ORDER NO. \_\_\_\_\_

PAGE 2

alleges such compensation is due under Section 13 of the South Carolina Depooling Guidelines (Depooling Guidelines), which were entered into by BellSouth, United, and GTE South, Inc. (GTE), in June 1993.

BellSouth's Answer denies that any compensation for terminating ACP traffic is due United. BellSouth contends its interpretation of the contract documents is supported by affidavits obtained from representatives of Coalition companies which, BellSouth asserts, state that any contrary arrangement would have put these companies at a serious disadvantage. These affidavits, which are attached to the Answer as Exhibits, do not address the Depooling Guidelines or BellSouth's obligation to pay United ACP compensation thereunder, but discuss other documents from the Coalition companies' perspective, and attempt to give the Coalition's understanding of those other documents.

United moves to strike the following allegations and discussion from BellSouth's Answer and Exhibits concerning the Coalition and Coalition companies: page 4, third full paragraph, through page 7, first full paragraph; page 8, footnote 10; page 8, second full paragraph, second sentence; Exhibit 4 (Affidavit of H. Keith Oliver); and Exhibit 5 (Affidavit of James C. Meade). United states that the Coalition was not made a party to this proceeding by either United or BellSouth, nor has the Coalition sought to intervene as a party of record. In addition, United's Complaint does not allege that compensation for ACP traffic is due from any Coalition company but seeks such compensation only from BellSouth under the Depooling Guidelines. United contends the references to the Coalition and Coalition companies in BellSouth's Answer constitute redundant, immaterial, and impertinent matter which should be stricken.



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An allegation in a defense is irrelevant when it has no substantial relationship to the controversy between the parties to the action. *J.M.S., Inc. v. Theo*, 241 S.C. 394, 128 S.E.2d 697 (1962). As stated above, this controversy is between United and BellSouth over whether BellSouth is required to pay ACP compensation under the Depooling Guidelines. United has not alleged that such compensation is due from any Coalition company and no Coalition company has been made a party to this proceeding. In addition, neither the Coalition nor any of its members were parties to, or participated in the development of, the Depooling Guidelines, upon which United's claim against BellSouth is based. Accordingly, any determination in this proceeding that United is entitled to ACP compensation from BellSouth under the Depooling Guidelines would not apply to the Coalition or any Coalition companies. The Commission concludes that allegations in BellSouth's Answer concerning any Coalition company's obligations under agreements other than the Depooling Guidelines have no substantial relationship to this controversy. Therefore, the Motion to Strike is granted.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

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Chairman

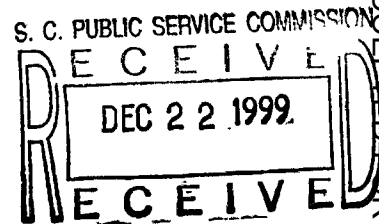
ATTEST:

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Executive Director

(SEAL)





BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

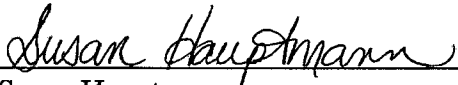
Docket No. 1999-377-C

United Telephone Company of the Carolinas,  
Complainant  
v.  
BellSouth Telecommunications, Inc.,  
Respondent

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one copy each of the **Motion to Strike and proposed Order Granting Motion to Strike** on behalf of United Telephone Company of the Carolinas, in the above matter by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Caroline N. Watson  
BellSouth Telecommunications, Inc.  
1600 Hampton Street, Suite 821  
Columbia, SC 29201

  
Susan Hauptmann

This 22nd day of December, 1999  
Columbia, South Carolina  
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